and Training Administration, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210.

[69 FR 77386, Dec. 27, 2004, as amended at 71 FR 35522, June 21, 2006]

§ 656.2 Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder.

(a) *Description of the Act.* The Act (8 U.S.C. 1101 *et seq.*) regulates the admission of aliens into the United States. The Act designates the Secretary of Homeland Security and the Secretary of State as the principal administrators of its provisions.

(b) *Burden of proof under the Act.* Section 291 of the Act (8 U.S.C. 1361) provides, in pertinent part, that:

> Whenever any person makes application for a visa or any other documentation required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not subject to exclusion under any provision of this Act * * *.

(c)(1) *Role of the Department of Labor.* The permanent labor certification role of the Department of Labor under the Act derives from section 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)), which provides that any alien who seeks admission or status as an immigrant for the purpose of employment under paragraph (2) or (3) of section 203(b) of the Act may not be admitted unless the Secretary of Labor has first certified to the Secretary of State and to the Secretary of Homeland Security that:

(i) There are not sufficient United States workers who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor; and

(ii) The employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(2) This certification is referred to in this part 656 as a ''labor certification.''

(3) We certify the employment of aliens in several instances: For the permanent employment of aliens under this part; and for temporary employment of aliens for agricultural and nonagricultural employment in the United States classified under 8 U.S.C. 1101(a)(15)(H)(ii), under the DHS regulation at 8 CFR 214.2(h)(5) and (6) and sections 101(a)(15)(H)(ii), 214, and 218 of the Act. See 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188. We also administer labor attestation and labor condition application programs for the admission and/or work authorization of the following nonimmigrants: Specialty occupations and fashion models (H–1B visas), specialty occupations from countries with which the U.S. has entered agreements listed in the INA (H–1B1 visas), registered nurses (H–1C visas), and crewmembers performing longshore work (D visas), classified under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1101(a)(15)(H)(i)(b1), 1101(a)(15)(H)(i)(c), and 1101(a)(15)(D), respectively. See also 8 U.S.C. 1184(c), (m), and (n), and 1288.

§ 656.3 Definitions, for purposes of this part, of terms used in this part.

Act means the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq.*

Agent means a person who is not an employee of an employer, and who has been designated in writing to act on behalf of an alien or employer in connection with an application for labor certification.

Applicant means a U.S. worker (see definition of U.S. worker below) who is applying for a job opportunity for which an employer has filed an *Application for Permanent Employment Certification* (ETA Form 9089).

Application means an *Application for Permanent Employment Certification* submitted by an employer (or its agent or attorney) in applying for a labor certification under this part.

Area of intended employment means the area within normal commuting distance of the place (address) of intended employment. There is no rigid measure of distance which constitutes a normal commuting distance or normal commuting area, because there may be widely varying factual circumstances among different areas (e.g., normal commuting distances might be 20, 30, or 50 miles). If the place of intended employment is within a Metropolitan Statistical Area (MSA) or a Primary